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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

11 IBRAHIM MAWARI,

Case No. 23-cv-06029-LB

12 Plaintiff,

13 v.

**ORDER GRANTING SUMMARY
JUDGMENT**

14 CONSTELLIS, LLC, et al.,

Re: ECF No. 46

15 Defendants.

17 **INTRODUCTION**

18 The plaintiff Ibrahim Mawari, who was fired after exhausting his medical leave, sued
19 Constellis and its subsidiary Triple Canopy for (1) wrongful termination in violation of public
20 policy, (2) disability discrimination in violation of California Government Code § 12940, the Fair
21 Employment and Housing Act (FEHA), (3) harassment in violation of FEHA, (4) failure to engage
22 in an interactive process, (5) failure to reasonably accommodate disability under FEHA, (6) failure
23 to prevent discrimination and harassment under FEHA, (7) unlawful retaliation in violation of
24 FEHA, and (8) unfair business practices in violation of Cal. Bus. & Prof. Code § 17200. The court
25 grants summary judgment because the plaintiff has not established a genuine dispute of material
26 fact on any claim.

STATEMENT**1. The Plaintiff's Employment History**

2 Constellis and Triple Canopy employed Mr. Mawari as an armed protective security officer
3 from October 2017 to March 2022. Mr. Mawari provided security for the United States Food and
4 Drug Administration in San Francisco and reported to Lt. Nicolo Gopez and Capt. Gary
5 Braunstein.¹ Mr. Mawari's role required him to be mentally and physically fit.² In January 2021,
6 Mr. Mawari was diagnosed with a right-shoulder rotator-cuff tear and underwent therapy and
7 surgery to remediate the injury.³ In June 2021, he applied for leave under the Family Medical
8 Leave Act (FMLA).⁴

2. The Defendants' Medical Leave Policies

12 The defendants' policies are available to employees, and the plaintiff acknowledged that he
13 reviewed the medical and sick leave policies.⁵ The defendants' FMLA policy requires employees
14 to contact the Human Resources Department for eligibility. Human Resources then evaluates the
15 request and determines whether further documentation is necessary. The FMLA policy allows for
16 twelve weeks of unpaid leave for family and medical reasons within a twelve-month period. The
17 defendants also use MetLife to administer short-term disability requests or Family Medical Leave.
18 MetLife reviews claims and relevant data, makes determinations, and conducts ongoing
19 evaluations regarding the employee's return to work. MetLife also provides claimants with
20 information regarding claim denial. Finally, under the defendants' Personal Leave of Absence

24 ¹ Askanas Decl. – ECF No. 46-1 at 2 (¶ 2). Citations refer to the Electronic Case File (ECF); pinpoint
25 citations are to the ECF-generated page numbers at the top of documents.

26 ² Sutkaykis Dep. – ECF No. 46-1 at 177 (pp. 21:4–16).

27 ³ Mawari Dep. – ECF No. 46-1 at 27 (pp. 112:1–21), 31 (pp. 134:19–23).

28 ⁴ MetLife Letter – ECF No. 46-1 at 217; MetLife Call Log – ECF No. 46-1 at 219.

⁵ Mawari Dep. – ECF No. 46-1 at 21 (pp. 80:3–22); Policy Acknowledgment – ECF No. 46-1 at 211.

1 Policy, employees can take an additional ninety days of unpaid time off each calendar year, in
2 addition to FMLA and short-term disability.⁶

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4 3. The Plaintiff's Leave and Termination

5 In June 2021, the plaintiff filed for a leave of absence under the defendants' FMLA policy and
6 sent a doctor's note to his supervisor, Lt. Nicolo Gopez. The note did not state a start and end date
7 for the plaintiff's leave, and Lt. Gopez requested an additional doctor's note providing those
8 dates.⁷ The second note, sent on June 17, 2021, said that Mr. Mawari could return to work on
9 December 21, 2021.⁸ He submitted a short-term disability claim to MetLife, which advised him
10 that the protected leave would last only twelve weeks. In October 2021, Mr. Mawari sent Lt.
11 Gopez a new doctor's note with a projected return date of February 2022. After the FMLA and
12 short-term disability periods expired, the defendants gave the plaintiff two ninety-day periods of
13 unprotected and unpaid leave until March 2022. During the second period of unpaid leave, the
14 defendants' human resources generalist Kristine Gillespie sent the plaintiff a letter in January 2022
15 asking when he would return to work.⁹ The plaintiff responded that he intended to return to work
16 and had already provided the doctor's note with a return date.¹⁰

17 In February, however, Mr. Mawari was diagnosed with tinnitus. He informed Lt. Gopez and
18 Ms. Gillespie that he was unable to return and did not provide an updated return date.¹¹ Ms.
19 Gillespie again asked for information regarding his ability to return to work.¹² She also requested
20 medical documentation and inquired about alternative accommodations for Mr. Mawari.¹³ After

22 ⁶ FMLA Policy – ECF No. 46-1 at 68–74; Personal Leave of Absence Policy – ECF No. 46-1 at 76–
23 79.

24 ⁷ Gopez Email String – ECF No. 46-1 at 81–82; Jan. 26, 2021 Doctor's Note – ECF No. 46-1 at 84.

25 ⁸ Jun. 17, 2021, Doctor's Note – ECF No. 46-1 at 88.

26 ⁹ Jan. 27, 2022, Gillespie Email – ECF No. 46-1 at 142.

27 ¹⁰ Jan. 27, 2022, Mawari Email – ECF No. 46-1 at 237–38.

28 ¹¹ Feb. 7, 2022, Mawari Email – ECF No. 48-1 at 30.

¹² Mar. 7, 2022, Gillespie Email – ECF No. 46-1 at 234.

¹³ Mar. 8, 2022, Gillespie Email – ECF No. 48-1 at 35–36.

1 determining that the plaintiff had exhausted all available leave policies, the defendants terminated
2 him, but encouraged him to reapply in the future.¹⁴ Mr. Mawari reapplied toward the end of 2022,
3 and the defendants determined that he was ineligible for rehire.¹⁵

4 **4. Procedural History and Jurisdiction**

5 The plaintiff filed this action in Alameda County Superior Court of the State of California. The
6 defendants removed the case to federal court under 28 U.S.C. § 1441. The court has diversity
7 jurisdiction under 28 U.S.C. § 1332.¹⁶ The parties consented to magistrate judge jurisdiction under
8 28 U.S.C. § 636(c).¹⁷

11 **LEGAL STANDARD**

12 The court must grant a motion for summary judgment if the movant shows that there is no
13 genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of
14 law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). Material
15 facts are those that may affect the outcome of the case. *Anderson*, 477 U.S. at 248. A dispute about
16 a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for
17 the non-moving party. *Id.* at 248–49. The party moving for summary judgment has the initial
18 burden of informing the court of the basis for the motion, and identifying portions of the
19 pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the
20 absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To
21 meet its burden, “the moving party must either produce evidence negating an essential element of
22 the nonmoving party’s claim or defense or show that the nonmoving party does not have enough
23 evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire &*
24 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000); *see Devereaux v. Abbey*, 263

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26 ¹⁴ Mar. 23, 2022, Gillespie Email – ECF No. 46-1 at 260.

27 ¹⁵ Mawari and Triple Canopy Texts – ECF No. 46-1 at 269.

28 ¹⁶ Notice of Removal – ECF No. 1 at 2–9.

¹⁷ Consent – ECF No. 9; Joint CMC Statement – ECF No. 13.

1 F.3d 1070, 1076 (9th Cir. 2001) (“When the nonmoving party has the burden of proof at trial, the
2 moving party need only point out ‘that there is an absence of evidence to support the nonmoving
3 party’s case.’”) (quoting *Celotex*, 477 U.S. at 325).

4 If the moving party meets its initial burden, then the burden shifts to the non-moving party to
5 produce evidence supporting its claims or defenses. *Nissan Fire & Marine*, 210 F.3d at 1103. The
6 non-moving party may not rest upon mere allegations or denials of the adverse party’s evidence,
7 but instead must produce admissible evidence that shows there is a genuine issue of material fact
8 for trial. *Devereaux*, 263 F.3d at 1076. If the non-moving party does not produce evidence to show
9 a genuine issue of material fact, then the moving party is entitled to summary judgment. *Celotex*,
10 477 U.S. at 323. In ruling on a motion for summary judgment, inferences drawn from the
11 underlying facts are viewed in the light most favorable to the non-moving party. *Matsushita Elec.*
12 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

13 A “district court need not examine the entire file for evidence establishing a genuine issue of
14 fact, where the evidence is not set forth in the opposing papers with adequate references so that it
15 could conveniently be found.” *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir.
16 2001). In other words, “whatever establishes a genuine issue of fact must both be in the district
17 court file and set forth in the response.” *Id.* at 1029; *see Keenan v. Allan*, 91 F.3d 1275, 1279 (9th
18 Cir. 1996) (“[I]t is not our task, or that of the district court, to scour the record in search of a
19 genuine issue of triable fact. We rely on the nonmoving party to identify with reasonable
20 particularity the evidence that precludes summary judgment.”).

21 22 ANALYSIS

23 Summary judgment for the defendants is warranted on all claims.

24 25 1. Reasonable Accommodation

26 The issue is whether there is a genuine dispute of fact as to whether the defendants failed to
27 provide Mr. Mawari with reasonable accommodations. There is not; their FMLA leave policy, two
28 additional unpaid leaves of absence, and offer for job reassignment exceeded their obligations.

1 Conversely, the plaintiff has not identified evidence of failure to provide any reasonable
2 accommodation.¹⁸

3 FEHA makes it unlawful “for an employer . . . to fail to make reasonable accommodation for
4 the known physical . . . disability of an applicant or employee.” Cal. Gov’t Code § 12940(m). In
5 evaluating FEHA claims, courts use the burden-shifting analysis set forth in *McDonnell Douglas*
6 *Corp. v. Green. Arparicio v. Comcast, Inc.*, No. 16-cv-3952-JST, 2017 WL 3453348, at *5 (N.D.
7 Cal. 2017) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Plaintiffs must first
8 make out a prima facie case that (1) they have a disability covered by FEHA, (2) they were
9 otherwise qualified to do their job, and (3) the defendant failed to reasonably accommodate the
10 disability. *Scotch v. Art Inst.of Cal. – Orange Cnty.*, 173 Cal. App. 4th 986, 1009–10 (2009).

11 Here, the defendants met their initial burden for summary judgment by showing that they
12 provided reasonable accommodations and questioning the plaintiff’s prima facie evidence. The
13 defendants honored the plaintiff’s FMLA leave, gave him ninety days of leave pursuant to
14 company policy, granted an additional ninety days of leave beyond company policy, and inquired
15 about further accommodations to help the plaintiff return to work.¹⁹

16 In response, the plaintiff argues that he should have received more time off pursuant to his
17 February message, which said that he was unable to work due to tinnitus and other issues. The
18 problem is that, as far as the defendants knew, the request was for indefinite leave, which is per se
19 not a reasonable accommodation under FEHA. *Zamora v. Costco Wholesale Corp.*, No. 23-cv-
20 04223-JST, 2025 WL 28551, *4 (N.D. Cal. Jan. 3, 2025). It is undisputed that the plaintiff did not
21 provide Constellis with a doctor’s note or return date.²⁰ Instead, the plaintiff provided the
22 information to MetLife.²¹ All available evidence indicates that the defendants cannot access

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26 ¹⁸ Mot. – ECF No. 46 at 17–19.

27 ¹⁹ Mar. 8, 2022, Gillespie Email – ECF No. 48-1 at 35–36.

28 ²⁰ Opp’n – ECF No. 48 at 10, 14.

²¹ *Id.*; Ingersoll Letter – ECF No. 48-1 at 50.

1 MetLife records and never learned of the return date sent there.²² The defendants cannot
2 unlawfully deny a request that they never received.

3 Nothing said by Constellis's 30(b)(6) designee Mike Sutkaytis — who testified on leave
4 policies — changes this analysis. He accurately explained that the plaintiff had exhausted his leave
5 under company policy. He further stated that the defendants were open to the plaintiff's return so
6 long as there was a definite return date but explained that the plaintiff indicated that he did not
7 know when he could return.²³

8 In his opposition brief, the plaintiff makes additional conclusory statements about the
9 defendants' alleged failure to provide accommodations.²⁴ But briefs are not evidence, and
10 allegations are not facts. The plaintiff did not meet his burden to identify evidence for his prima
11 facie case, and thus the claim fails as a matter of law.

12 2. Interactive Process

13 The issue is whether there is a genuine dispute of material fact about whether the defendants
14 failed to engage in the interactive process. There is not. Rather, all evidence indicates that the
15 plaintiff stopped engaging.

16 FEHA prohibits an employer from “fail[ing] to engage in a timely, good faith, interactive
17 process with an employee to determine effective reasonable accommodations, if any, in response
18 to a request for reasonable accommodation by an employee or applicant with a known physical or
19 mental disability.” Cal. Gov’t Code § 12940(n). “[I]t is the employee’s initial request for an
20 accommodation which triggers the employer’s obligation to participate in the interactive process
21 of determining one.” *Spitzer v. The Good Guys, Inc.*, 80 Cal. App. 4th 1376, 1384 (2000). “The
22 interactive process requires communication and good-faith exploration of possible
23 accommodations between employers and individual employees with the goal of identifying an
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27 ²² Gillespie Dep. – ECF No. 46-1 at 204 (pp. 48:21–25).
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²³ Sutkaytis – ECF No. 48-1 at 86 (142:12–19).

²⁴ Opp’n – ECF No. 48 at 22–23.

1 accommodation that allows the employee to perform the job effectively.” *Nadaf-Rahrov v. Neiman*
2 *Marcus Group, Inc.*, 166 Cal. App. 4th 962, 984 (2008). For the process to work, both sides must
3 communicate directly and exchange essential information, and neither side can delay or obstruct
4 the process. *Id.* at 984–85; *accord Humphrey v. Memorial Hosps. Ass’n*, 239 F.3d 1128, 1138–39
5 (9th Cir. 2001). The employee has the burden of proof to identify whether a reasonable
6 accommodation was possible. *Nadaf-Rahrov*, 166 Cal. App. 4th at 984.

7 The plaintiff argues that the defendants breached their obligation to engage in the interactive
8 process by refusing to extend his leave beyond March 2022.²⁵ The undisputed evidence shows that
9 the ball was in in the plaintiff’s court.²⁶ After learning of the plaintiff’s new medical challenges,
10 Ms. Gillespie asked the plaintiff for documentation and asked whether reasonable
11 accommodations could help him return to work.²⁷ As discussed above, there is no evidence that
12 the plaintiff provided the requested information to Constellis or identified reasonable
13 accommodations, instead standing on his request for apparently indefinite leave.

14 The court grants summary judgment for this claim.

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16 3. Disability Discrimination

17 The issue is whether there is a genuine dispute of fact on the plaintiff’s disability-
18 discrimination claim. The answer is no: it falls with the underlying accommodation claim.

19 The *McDonnell Douglas* test requires the plaintiff to establish a *prima facie* case of
20 discrimination. *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 354 (2000) (FEHA discrimination). After
21 the plaintiff establishes that rebuttable presumption of discrimination, the burden shifts to the
22 employer to provide a “legitimate, nondiscriminatory reason for the adverse-employment action.”
23 *Id.* The burden then shifts back to the plaintiff to prove that the employer’s stated reason for the
24 adverse action was pretextual. *Id.*

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26 ²⁵ Opp’n – ECF No. 48 at 18.

27 ²⁶ Reply – ECF No. 50 at 12 (detailing all efforts to engage with the plaintiff).

28 ²⁷ Mar. 8, 2022, Gillespie Email – ECF No. 48-1 at 35–36.

1 In a reasonable-accommodation case with an adverse employment action, a failure to make a
2 reasonable accommodation is direct evidence of disability discrimination. *Capote v. CSK Auto,*
3 *Inc.*, No. 12-cv-02958-JST, 2014 WL 1614340, at *7 (N.D. Cal. Apr. 22, 2014). “The disability
4 discrimination and the reasonable-accommodation analyses merge, the court applies the general
5 summary-judgment burden shifting analysis, and the disability-discrimination claim depends on
6 the viability of the reasonable-accommodation claim coupled with a showing of the adverse
7 employment action.” *Id.* (collecting cases).

8 The disability discrimination claim is predicated on the alleged failure to provide reasonable
9 accommodations. Because the reasonable-accommodation claim, so too does the discrimination
10 claim.

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12 **4. FEHA Harassment**

13 The issue is whether there is a genuine dispute of fact on the plaintiff’s FEHA harassment
14 claim. The claim fails because no reasonable jury could find severe harassment on this record.

15 To state a claim for harassment under the FEHA, the plaintiff must allege that (1) he is a
16 member of a protected group, (2) he was subjected to harassment for belonging to the group, and
17 (3) the “alleged harassment was so severe that it created a hostile work environment.” *Lawler v.*
18 *Montblanc N. Am.*, 704 F.3d 1235, 1244 (9th Cir. 2013) (citing *Aguilar v. Avis Rent A Car Sys., Inc.*, 21 Cal. 4th 121, 129–30 (1999)). The harassment must be a “concerted pattern . . . of a
19 repeated, routine or a generalized nature.” *Id.* “Isolated incidents that do not exist in a concerted
20 pattern can also fulfill the ‘severe or pervasive’ prong, but only if such isolated incidents consist of
21 ‘a physical assault or the threat thereof.’” *Landucci v. State Farm Ins. Co.*, 65 F. Supp. 3d 694,
22 703–04 (N.D. Cal. 2014) (cleaned up).

23 In his opposition brief, the only evidence of harassment the plaintiff identifies is emails from
24 Constellis personnel.²⁸ The plaintiff argues that the messages falsely suggest that he was not
25 communicating with Constellis and threatened termination. Even if true, they do not evince severe
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28 ²⁸ Opp’n – ECF No. 48 at 23.

1 harassment. Ms. Gillespie, for example, says “[w]e have not received information from you
2 regarding your ability to return to a position with the Company,” and “[i]f we do not hear from
3 you . . . you will be administratively separated from the Company.”²⁹ If anything, the messages
4 show Constellis’s efforts to engage in the interactive process and provide reasonable
5 accommodations. No reasonable jury could find that the emails constitute harassment.

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7 5. Retaliation

8 The issue is whether there is a genuine dispute of fact as to whether the defendants retaliated
9 against the plaintiff for protected activity. There is not. The plaintiff identifies no evidence of
10 retaliation.

11 On a motion for summary judgment, courts analyze FEHA claims using the burden-shifting
12 framework that the Supreme Court established in *McDonnell Douglas Corp.*, 2021 WL 981305, at
13 *6. Under this framework, the plaintiff must present a prima facie case of discrimination. Then the
14 burden shifts to the defendant to articulate a nondiscriminatory reason for the challenged action. If it
15 does, then the plaintiff must raise a triable issue of material fact that the defendant’s proffered
16 reasons are pretext for unlawful discrimination. *Young*, 2021 WL 981305, at *6.

17 To state a prima facie claim of FEHA retaliation, a plaintiff must show that he engaged in a
18 protected activity under the statute, his employer subjected him to an adverse employment action,
19 and there is a causal link between these two events. *Lewis v. City of Benicia*, 224 Cal. App. 4th
20 1519, 1533 (2014) (FEHA).

21 The plaintiff’s opposition does not identify an alleged retaliatory act.³⁰ Assuming, arguendo, it
22 is the plaintiff’s termination, he still provides no evidence of causation. Bald allegations in a brief
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²⁹ Jan. 27, 2022, Gillespie Email – ECF No. 46-1 at 142; Mar. 7, 2022 Gillespie Email – ECF No. 46-1 at 234.

³⁰ Opp’n – ECF No. 48 at 24.

1 are not evidence, and the court need not scour the record for triable issues of fact.³¹ *Keenan*, 91
2 F.3d at 1279.

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4 **6. Derivative Claims**

5 The final issue is the plaintiff's derivative claims. The plaintiff admits that his claims for
6 wrongful termination in violation of public policy, failure to prevent discrimination, harassment,
7 and retaliation, and violation of the Bus. & Prof. Code § 17200 rest on the same evidence as the
8 above.³² Because there is no genuine dispute of material fact on the underlying issues of
9 discrimination, harassment, and retaliation, the derivative claims also fail as a matter of law.

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11 **CONCLUSION**

12 The court grants summary judgment in favor of the defendants for all claims.

13 **IT IS SO ORDERED.**

14 Dated: May 29, 2025



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16 LAUREL BEELER
17 United States Magistrate Judge

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26 ³¹ *Id.* ("Plaintiff's claim for retaliation is derivative of his claims for failure to engage in a good faith
27 interactive process as well as the failure to reasonably accommodate a disability and discrimination.
28 Here, Defendants retaliated against Plaintiff for having a disability, engaging in protected activity
including exercising his right take medical/disability leave and for seeking an accommodation.").

³² Opp'n – ECF No. 48 at 24–25.